

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK**

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TIMOTHY D. WATSON,

07 CV 0345 (NG) (CLP)

Petitioner,

-against-

ORDER

**THE HONORABLE PETE GEREN,
Acting Secretary of the Army,**

Respondent.

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GERSHON, United States District Judge:

By a judgment dated April 16, 2007, this court granted petitioner's petition for a writ of habeas corpus and ordered respondent to grant petitioner's application for conscientious objector status and release him through immediate discharge. Respondent now seeks a sixty (60) day stay of the judgment to permit him to file an appeal and, if an appeal is filed, a stay pending decision by the Court of Appeals for the Second Circuit. Respondent does not seek an order requiring petitioner to report to active duty, but agrees to maintenance of the status quo pending determination by the Court of Appeals.

Respondent argues that, absent a stay, "there is a risk that the Army effectively will lose its right to appeal, as it is unclear how the Army would go about re-commissioning Petitioner after he has been discharged from the service." I disagree. Entry of judgment will not divest respondent of his right to appeal or return petitioner to Army custody if an appeal were successful. *See Lovallo v. Froehlke*, 468 F.2d 340, 344 (2d Cir. 1972) (holding, under facts strikingly similar to those presented here, that "[r]eversal undoes what the habeas corpus did and makes lawful a resumption of custody") (quoting *Eagles v. United States ex rel. Samuels*, 329 U.S. 304, 308 (1946)). Because respondent fails

to show that the Army will suffer *any harm* upon denial of a stay, analysis of the remaining stay factors, as outlined in *Mohammed v. Reno*, 309 F.3d 95, 100 (2d Cir. 2002), is unnecessary. Accordingly, respondent's motion is denied.

SO ORDERED.

/s/
NINA GERSHON
United States District Judge

Dated: Brooklyn, New York
May 18, 2007